

	)	
<b>E.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 13-812</b>
	)	<b>Issued: July 26, 2013</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Buffalo, NY, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

On February 22, 2013 appellant filed a timely appeal from the November 9, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) which denied his request for reconsideration. Because more than 180 days elapsed from the January 30, 2012 merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits under 5 U.S.C. § 8128(a).

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On December 13, 2011 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim alleging that on December 5, 2011 he was struck by a motor vehicle in the performance of duty. He alleged injuries to his neck, shoulders, leg and head. Appellant stopped work on December 5, 2011 and returned on December 9, 2011.

By decision dated January 30, 2012, OWCP denied appellant's claim finding that the medical evidence did not establish that his diagnosed medical conditions were causally related to the accepted employment incident.

On August 12, 2012 appellant requested reconsideration. He indicated that he was requesting help regarding coverage of the medical expenses resulting from the accident. A copy of the police report accompanied appellant's request. He also included copies of the invoices from the emergency room and radiologist. Appellant provided copies of the ambulance service invoice, and denials of coverage by his auto and health insurance.

By letter dated September 6, 2012, OWCP advised appellant that the only documents that were received with his reconsideration request were the appeal form and the police report. Appellant was allotted 30 days to submit the additional evidence. On October 11, 2012 OWCP received a response from appellant that included a motor vehicle insurance claim denial. No additional medical evidence was submitted.

By decision dated November 9, 2012, OWCP denied appellant's August 12, 2012 request for reconsideration without a review of the merits on the grounds that his request neither raised substantial legal questions nor included new and relevant evidence.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>2</sup> OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>3</sup>

---

<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>4</sup>

### **ANALYSIS**

Appellant disagreed with the denial of his claim and requested reconsideration on August 12, 2012. In support of his claim, he submitted a statement and requested help regarding coverage of the expenses resulting from the accident. Appellant also submitted a motor vehicle insurance claim denial. The Board notes that this is not relevant to his claim, as OWCP accepted that on December 5, 2011 appellant was in a motor vehicle accident in the performance of duty. The underlying issue on which the claim was denied is medical in nature; *i.e.*, whether the medical evidence establishes that the December 5, 2011 work incident caused a diagnosed medical condition. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>5</sup> Appellant did not submit any medical evidence relevant to this underlying issue.

Appellant also did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

On appeal, appellant provided new and not previously submitted evidence, which included a copy of the ambulance bill. He asserted that he only wants to have his ambulance bill paid. However, the issue of payment of emergency medical expenses was not decided by OWCP and is therefore not before the Board.<sup>6</sup> Appellant must raise the issue of payment of his ambulance bill for consideration by OWCP first. He would then have the right to appeal a decision on that issue, if necessary, to the Board.

### **CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

---

<sup>4</sup> *Id.* at § 10.608(b).

<sup>5</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>6</sup> There are provisions for payment of certain emergency expenses on a case by case basis. 20 C.F.R. § 10.304; Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(1)(3), (February 2012); *Michael L. Malone*, 46 ECAB 957 (1995). Following the December 5, 2011 motor vehicle accident, appellant was transported by ambulance to a local emergency room for treatment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 9, 2012 nonmerit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board